

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 2901 OF 2001

Maharashtra General Kamgar Union. ...Petitioner.

Versus

M/s.Pam Pharmaceuticals and Allied

Machinery Co.Ltd. ...Respondent.

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Mr. N.M. Ganguli for the Petitioner.

Mr.R. V. Paranjape for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

February 9, 2005.

ORAL JUDGMENT:

This petition is directed against an award of the Labour Court of 15th September 2001 in a reference to adjudication under

Section 10 of the Industrial Disputes Act, 1947. The workman in question, S.B. Bhatkar, was employed in the service of the Respondent as a Borer. On 3rd July 1989, a bandh was declared in Mumbai at the instance of a political party. According to the management, an understanding was arrived at with the members of the Committee of the Trade Union in the establishment that since the bandh had been declared on 3rd July 1989, that day would be treated as a weekly off to the workmen instead of 5th July 1989 which was a normal weekly off. In the meeting it was also decided to change the shifts of the workers on 4th July 1989 as the change in shift was a procedure which took effect the day after the weekly off. This was notified by a notice by the management. It is alleged that on 3rd July 1989, from 3 p.m., the chargesheeted workman was instrumental in instigating the workers not to observe the change in weekly off and that he advised the workers not to report for duty according to the modified timings. Then, it was alleged that on 4th July 1989, the workman came to the factory gate at 3 p.m., and when he was told by the Security Officer not to come inside as he was not on the 3 p.m.

shift on that day, the workman defied the instructions, came inside the factory and started instigating the workers to stay away from duty on 5th July 1989. On the instigation of the workman, it is alleged, the workmen decided to resort to the action of abstaining from work which amounted to an illegal strike. This, it is alleged, resulted in damages, in that no production was possible on 4th July 1989 in the Machine Shop and on 5th July 1989 all Sections of the Company remained closed. It is also alleged that on 4th July 1989, the workman along with 20 workers had gone to the Security Officer and asked for time punch cards. When the Security Officer informed the workman that he would not be given his time punch card as he did not report in his assigned shift, the Security Officer was threatened with dire consequences. A chargesheet was issued to the workman on 6th July 1989 and besides reciting the aforesaid allegations which formed part of the chargesheet, it was stated that in the past, a chargesheet had been issued to the workman on 16th January 1989 for insubordination and for disobeying lawful and reasonable orders of his superiors. A disciplinary enquiry had been commenced on the previous occasion,

but on the assurance of the workman that he would behave in a disciplined manner, he was permitted to resume work. In the circumstances, it was alleged that the misconduct which has been committed was of a grave and serious nature. The workman was proceeded with under clauses (a), (b), (k), (l) and (r) of Standing Order 24 on grounds of willful subordination and disobedience of lawful and reasonable orders of superiors; going on an illegal strike; of abetting, instigating or acting in furtherance thereof; of riotous and disorderly behaviour; commission of an act subversive of discipline and good behaviour; and holding meetings inside the premises of the establishment without the previous permission of the Manager.

2. Upon the chargesheet that was issued to the workman on 6th July 1989, the management passed an order of discharge on 9th July 1989. The order of termination recorded that the workman was being discharged from service with immediate effect and that an enquiry was not being held. The reason cited was that continuous insecurity and chaos had then created by the workman in the plant

and his acts of intimidation against managerial personnel made it impossible for the management to conduct an inquiry and complete it. The management reserved its right to lead evidence on the charges levelled against the workman before the appropriate forum when the matter was taken up. Upon a reference to adjudication, the management availed of an opportunity to lead evidence in support of the charges levelled against the workman. The Labour Court came to the conclusion that the charges of misconduct stood established.

3. In its award, the Labour Court held that the evidence which had been adduced on the part of the management was sufficient to hold that the workman had committed misconduct and that the charge was serious enough to warrant the punishment of dismissal from service. However, the Labour Court held that the penalty of discharge which was imposed by the management was not listed in the Standing Orders. The Labour Court was of the view that the employer had simply chosen not to hold an enquiry on the basis of "some report". In these circumstances, the Court held that while no

case for reinstatement had been made out, it would be appropriate to grant compensation in lieu of reinstatement. The quantum of compensation was quantified as back wages from 10th October 1996 (the date on which the first witness on the part of the management stepped into the witness box), until the date of the award which is 15th September 2001. Accordingly, the aforesaid compensation has been directed to be paid to the workman. The award of the Labour Court, in so far as it directs the payment of compensation, has not been challenged by the management.

4. Counsel appearing on behalf of the Petitioner urged four submissions in support of the Petition: (i) The evidence on the record did not show that the misconduct has been proved; (ii) The punishment of dismissal was grossly disproportionate and that under Section 11A of the Industrial Disputes Act, 1947, the Labour Court would have been justified in interfering with the penalty; (iii) The relief that ought to have been awarded in the present case was the normal relief of reinstatement with back wages; and (iv) Even if the

compensation was to be granted in lieu of reinstatement, adequate compensation ought to have been awarded: The Labour Court should have taken into account the back wages and the component of future wages and the compensation ought not to have been awarded on the basis of the last drawn wages in such a case. These submissions can now be considered.

5. In so far as the finding of misconduct is concerned, it would be necessary to note that the evidence on the record has been considered by the Labour Court in a considerable degree of detail. The Labour Court noted that all the witnesses of the employer categorically stated that there was a meeting between the members of the Committee of the Union and Mr.N. J. Thomas on 2nd July 1989 on observing a weekly off on the day of the bandh, that is on 3^d July 1989, so that the weekly off of 5th July 1989 would be treated as a working day. The oral evidence showed that an understanding was reached to that effect between the members of the Committee and a notice was pasted on the Notice Board for communication to all the

workers. N.J. Thomas, one of the witnesses deposed that on 2nd July 1989 at about 3 p.m., the workman had instigated other workers not to observe the change in the weekly off and had called upon them not to report for duty according to the notified change. On 4th July 1989 at 3 p.m., the workman came to the factory gate and when the Security Officer told him not to enter, the workman defied his instructions, entered the factory and went around instigating the workers to stay away from duty on 5th July 1989. At the instigation of the workman, the employees resorted to a concerted action of abstention from work as a result of which, no production was possible on 5th July 1989. Apart from the evidence of Mr.N. J. Thomas, who was the Personnel Officer, the management adduced the evidence of Raju Sherigar, who was a Senior Engineer in the Machine Shop, S.J. Chavan, the Security Officer and R.G. Keni who was also a Security Officer. The evidence of these officials corroborated the evidence of the first witness. The Labour Court had due regard to the evidence of the workman and noted that the evidence of the workman showed that on 2nd July 1989, he had held a meeting with the other members of the

Committee of the Union and had enquired about the meeting which was held with N.J. Thomas. The Labour Court held that it was necessary for the workman to have at least examined his colleagues who were members of the Committee of the Union to support his case that he had not intervened in the incident or that he was not guilty of committing any misconduct. The Labour Court held on a review of the evidence that the management had proved that on 2nd July 1989 from about 3 p.m. onwards, the workman had been instrumental in instigating many of the workmen not to observe the change in the weekly off and in advising the workmen not to report for duty according to the notified timings. Moreover, the Labour Court held that the management had proved that on 4th July 1989 when the workman came to the factory gate, he had defied the instructions of the Security Officer who had told him not to enter as he was not in the 3 p.m. shift on that day. In defiance of the instructions, the workman came inside the factory and went around instigating workers to stay away from duty on 5th July 1989.

6. The finding which has been arrived at by the Labour Court is borne out from the evidence on the record. The Labour Court cannot be regarded as having transgressed its jurisdiction or as having committed any error apparent on the face of the record as to warrant interference of this Court under Article 226. In the jurisdiction which this Court exercises under Article 226, which is of a supervisory nature, the Court will not substitute its own findings on the evidence for those of the Labour Court. This Court is not an appellate forum. The Labour Court, in my view, held with justification that the misconduct is serious. At the instigation by the workman, the workers were induced not to report for work, in any event on 5th July 1989, as a result of which, there was no production in the factory. In these circumstances, the Labour Court held that this was perhaps a case in which even an order of dismissal would have been justified.

7. Be that as it may, the Labour Court was of the view that the order of discharge which was passed was not one of the penalties which was listed out in clause 25 of the Standing Orders. There is

no challenge in these proceedings by the employer to the order of the Labour Court awarding compensation. Before this Court, a grievance has been made on behalf of the Petitioner that the award of compensation that has been made by the Labour Court has not adequately taken into account the components of back wages and loss of future employment. The last drawn salary of the workman was Rs.2,000/- and it was submitted that there is no reason why the subsequent enhancement in the salary that would have been availed of by the workmen should not have been taken into account in arriving at a just index of compensation. Reliance was placed on the judgments of the Supreme Court in **Workmen of Bharat Fritz Werner (P) Ltd. vs. Bharat Fritz Werner (P) Ltd.**, AIR 1990 SC 1054 and **V.B. Rao vs. Steel Authority of India Ltd.**, AIR 1991 SC 1742. The Court has been informed that the total amount of compensation that would be payable to the workman works out to Rs. 1.20 lakhs approximately. In fairness, it must be stated, that Counsel appearing on behalf of the First Respondent stated that he would leave the determination of fair compensation, to the Court in the facts and

circumstances of the case. In the circumstances, the order of the Labour Court shall stand modified to the extent that the compensation which is due and payable to the workman shall stand enhanced to Rs. 1.75 lakhs. This has not been opposed on the part of the employer. The order of the Labour Court is modified to the aforesaid extent. The petition is accordingly disposed of. There shall be no order as to costs.

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